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July 8, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Washington, DC 20554

Re: Written Ex Parte Presentation
CC Docket No. 96-45
Federal-State Joint Board on Universal Service

Federal-State Joint Board on Universal Service Seeks Comment on Review Of the Definition of Universal Service

Dear Ms. Dortch,

The Organization for the Promotion and Advancement of Small Telecommunications Companies (OPASTCO) responds to the ex parte presentation filed by counsel for the Competitive Universal Service Coalition (CUSC) on June 5, 2002 in the above-captioned proceeding. In particular, OPASTCO focuses on the arguments CUSC raises with respect to adding equal access to the universal service definition. Most of the points CUSC makes regarding equal access are simply a rehash of the arguments made in its January 4, 2002 reply comments in this proceeding.

CUSC argues that equal access should not be added to the universal service definition. It states that equal access does not satisfy the §254(c)(1) criteria for inclusion of a service in the universal service definition because equal access is not a "service" that consumers have "opted" to purchase through "free market" decisions. Rather, CUSC asserts that equal access is a legal mandate that courts and regulators imposed on incumbent local exchange carriers (ILECs) to prevent them from leveraging their local monopoly power into the long distance market.

To begin with, the argument that equal access cannot be added to the definition because it is not a service that consumers have opted to purchase through free market decisions is invalidated by the existing list of supported services, none of which are individually "chosen" by the customer. For instance, when a customer subscribes to basic phone service, they do not "opt" to purchase single-party service, access to emergency services, access to operator services, or access to directory assistance. All are features of the overall package. The same applies to equal access. It is a standard and expected service in a basic local service package. Moreover, the statutory mandate to provide dialing parity[1] falls under §251(b), which applies to all local exchange carriers (LECs), including the "new entrants" into a local service area.[2] If the dialing parity requirement was imposed for the reason CUSC states, Congress would have placed it under §251(c), which includes obligations that only apply to ILECs. The fact that Congress required all LECs to provide dialing parity illustrates beyond a shadow of a doubt that equal access is in the public interest and should be supported by universal service.

Next, CUSC asserts that regulatory parity is not appropriate with respect to equal access, given mobile service providers' "statutory exclusion" from equal access requirements and the costs of modifying existing equipment. The §332(c)(8) prohibition on an equal access requirement for mobile service providers should not prevent its inclusion in the universal service definition on the grounds that it is "anti-competitive." Eligible telecommunications carrier (ETC) status is sought voluntarily. It is absurd to equate a general exemption from a regulatory requirement with conditions that attach only to carriers that choose of their own volition to seek ETC designation. Of course, ETC designation is attractive because it is what makes a carrier eligible for universal service support funds. But, with that designation comes the responsibility to provide rural and high cost customers with a baseline level of services. The argument that the definition of universal service must not be upgraded unless certain carriers can meet the new standard is a perversion of the pro-consumer foundation on which the national universal service policy rests. All LECs, both incumbents and competitors, had to incur the costs of becoming capable of providing dialing parity by the Commission-mandated deadline of February 8, 1999.[3] There is no reason why wireless carriers should not have to make the necessary upgrades to become equal access-capable if they seek ETC designation. Indeed, the FCC's universal service principle of competitive and technological neutrality demands it.

[1] The duty to provide dialing parity extends beyond equal access to interexchange service to include parity for providers of telephone exchange service as well.
[2] *See,* Telecommunications Act of 1996, Joint Explanatory Statement of the Committee of Conference, Conference Agreement, p. 121: "New section 251(b) imposes several duties on all local exchange carriers, including the 'new entrants' into the local exchange market. These include the duties: ...(3) to provide dialing parity;…"
[3] 47 C.F.R. §51.211(a).

CUSC further argues that consumers should have the right to decide whether they want to buy local service from an ILEC or from an alternative carrier that may offer a different set of benefits. It pretends as if this alternative does not already exist. Wireless carriers often provide competitively-priced service in rural service areas without any universal service support. These carriers have every right to choose not to provide equal access if that enables them to provide other benefits that consumes may desire. However, Congress obviously did not find that these other benefits outweighed the importance of equal access when it mandated that all LECs provide it. When a wireless carrier is granted ETC designation, it is offering a set of services designed to <u>substitute</u> for that of a LEC and is establishing its ability to be the carrier of last resort, the same as the ILEC or any other wireline competitive ETC (CETC). Certainly, if Congress felt strongly enough about the importance of equal access to require all LECs to provide it, then it must have also intended for any carrier that makes a service offering that directly competes with, and substitutes for, a LEC's services to do so as well.[4]

CUSC asserts that it is immaterial that CETCs in rural ILEC service areas receive portable support based on ILECs' costs, including the cost of equal access.[5] It says that this does not relate to the definition of universal service and that it is really an assault on the fundamental principle of portability. In fact, it is quite material that CETCs in rural ILEC service areas receive portable support based on the ILEC's costs, including the cost of equal access, given the fact that it allows wireless carriers to receive a windfall of support at ratepayers' expense. This is a violation of §254(e), which requires that support be used "only for the provision, maintenance, and upgrading of facilities and services for which the support is intended." A support system that allows competitors with an entirely different network and cost structure than the incumbent to receive the same per-customer support encourages regulatory arbitrage and uneconomic competitive entry, needlessly inflates the fund, and places an unnecessary burden on the nation's ratepayers. While these issues may be beyond the scope of this proceeding, it is certainly relevant that wireless carriers are able to receive support based, in part, on the ILEC's costs of providing equal access, which they do not incur. Including equal access in the universal service definition would be a good interim step in addressing the cost differences and service responsibilities between ILECs and wireless ETCs until the broader issues of portability are considered.

Finally, CUSC states that as new entrants with relatively few customers, CETCs are likely to have significantly higher embedded costs per-line than most ILECs. If this is the case, it is difficult to understand why these carriers advocate vigorously for the continuation of the present system of portability if basing support on their own costs would entitle them to significantly more support than the ILEC's per-line amount. The

[4] Congress clearly foresaw the day when wireless carriers would engage in direct competition with traditional wireline local carriers. This is why the 1996 Act's definition of a "local exchange carrier" provides the Commission with the authority to find that the provision of commercial mobile service, in certain instances, should be included in the LEC definition. 47 U.S.C. §153(26).

[5] In an ex parte filed June 12, 2002, CUSC attempted to argue that rural ILECs recover no equal access costs through the high cost universal service fund. However, GVNW Consulting, Inc., in a response ex parte filed June 19, 2002, definitively demonstrated that equal access costs are, in fact, included in the calculation of high cost universal service support.

fact is awarding a CETC the ILEC's per-line support enables the CETC to seek and obtain support only where the support will give it a competitive advantage over the ILEC. Thus, when CETCs respond to the regulatory incentives created by the Commission's existing portability rules, their per-line costs are most likely to be lower than the incumbents' costs. Indeed, in many instances the wireless competitor has been successfully providing self-supporting service prior to its ETC designation. While it is theoretically possible that a competitive carrier could have higher-per-line costs than an incumbent, it is doubtful that such a competitor would choose to enter a market under those conditions.

In short, equal access should be added to the list of services supported by universal service. It meets all four of the §254(c)(1) definitional criteria. It is pro-competitive and competitively neutral. And, most importantly, it is in the public interest.

A copy of this letter is being filed electronically in CC Docket No. 96-45. It is also being distributed to those on the attached service list.

Respectfully submitted,

THE ORGANIZATION FOR THE PROMOTION AND ADVACEMENT OF SMALL TELECOMMUNICATIONS COMPANIES

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